

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

YSIEM CORPORATION,

Plaintiff,

v.

COMMERCIAL NET LEASE REALTY,
INC. and OFFICE MAX, INC.,

Defendants.

Civil No. 98-2387 (JAF)

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CLERK OF COURT
U.S. DISTRICT COURT
SAN JUAN, P.R.

SCHEDULING ORDER

Under Fed. R. Civ. P. 16, as amended, the court is required to schedule and plan the course of litigation, in order to achieve a just, speedy, and inexpensive determination of the action. Fed. R. Civ. P. 1; Fed. R. Evid. 102. In so doing, the court advises litigants that we firmly believe in the interplay of Fed. R. Civ. P. 7, 11, 16, and 26 to 37, as amended up to December 1, 1993. These rules require increased lawyer responsibility coupled with a mandate to the court to increase the level of judicial management and control of litigation. All documents filed in this case will be read as if containing a warranty certificate as to quality and content. The filings must be done to the best of the lawyer's knowledge, information, and belief, formed after reasonable inquiry. Accordingly, it is **ORDERED** by the court as follows:

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1 1. All outstanding pleadings shall be filed **not later than**
2 **September 13, 1999**. Any motion to amend pleadings and/or to add
3 parties shall be filed **not later than September 17, 1999**. In any
4 event, the pleadings' stage should be concluded by **October 13, 1999**.
5 **Further amendments will only be allowed for good cause shown.**

6 2. All discovery shall be completed **on or before February 1,**
7 **2000**. Counsel should become familiar with J. Shapard & C. Seron,
8 Attorneys Views of Local Rules Limiting Interrogatories (Federal
9 Judicial Center 1986). Rather than imposing an arbitrary limit to
10 the number of questions to be included in an interrogatory, the court
11 urges litigants to realize that we will impose such limitation on
12 interrogatories and requests for admissions on a case-by-case basis
13 if moved by the opposing party based on solid procedural grounds.
14 Discovery by any method should be tailored to the scope and spirit of
15 the rules and nothing else.

16
17 3. Any dispositive motion, e.g., motions to dismiss, for
18 judgment on the pleadings, and/or for summary judgment, shall be
19 filed **not later than March 3, 2000**. Oppositions to the dispositive
20 motions shall be filed within the term provided to that effect by the
21 rules of this court. If a given issue is mature for summary
22 disposition, we expect the parties to file the Fed. R. Civ. P. 56
23 motion as soon as the issue ripens.
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1 4. The Pretrial Conference of this cause is hereby scheduled
2 to be held on April 6, 2000, at 1:30 P.M. The parties will file a
3 Proposed Pretrial Order which will be the product of their joint
4 work. Counsel are directed to meet at least ten (10) days prior to
5 the date of the pretrial to discuss, not only the contents of the
6 Proposed Pretrial Order, but also the possibility of the extra-
7 judicial determination of the action. If settlement cannot be agreed
8 to, the parties will treat during said meeting the designation and
9 marking of exhibits and depositions, as well as the proposed voir
10 dire and jury instructions in the event that the matter is to be
11 tried before a jury.
12

13 The Proposed Pretrial Order shall contain the complete caption
14 of the case and shall set forth the following:
15

16 I.
17

18 NATURE OF THE CASE
19

20 The parties should attempt to agree on the description to be
21 given under the title "Nature of the Case". Issues of jurisdiction
22 shall be included herein. In the event that the parties cannot agree
23 on the content under this subsection, each party should give its
24 version of the nature of the case duly identified as plaintiff's
25 statement of the nature of the case, defendant's statement of the
26 nature of the case, etc.

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II.

THEORY OF THE PARTIES

Each party will be identified fully and its theory of the case, including citations of statutes and/or case law, when applicable, will be given. In this respect, be mindful of Erff v. Markhon Industries, Inc., 781 F.2d 613, 617 (7th Cir. 1986), and Rodríguez v. Ripley Industries, Inc., 507 F.2d 782, 786-87 (1st Cir. 1974). See also Awilda Ramírez Pomales v. Becton Dickinson & Co., S.A., 839 F.2d 1, 3-6 (1st Cir. 1988). Attorneys at the pretrial conference must make a full and fair disclosure of their views as to what the real issues of the trial will be, inasmuch as the pretrial order will supersede the pleadings in establishing the issues to be considered at trial.

III.

THE ADMITTED FACTS

The parties are directed to fully stipulate all matters which can be the object of admission and/or stipulation. Whenever it is appropriate, a reference to documents which will be submitted in evidence shall be made in each particular stipulation and/or factual admission.

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IV.

THE ULTIMATE FACTS WHICH WILL BE DISPUTED

The parties should attempt to agree on which will be the ultimate facts to be disputed. In the event that they cannot reach said agreement, each party should designate what, in its opinion, are the ultimate facts which the court will have to pass upon to resolve the controversy.

V.

LIST OF EXHIBITS AND TRANSLATION OF SAME

Not later than ten (10) working days before the date scheduled for the trial, the parties will meet, after having requested the appropriate appointment, with the Courtroom Deputy Clerk assigned to the presiding judge to mark those pieces of documentary and/or real evidence which will be admitted into evidence, as well as those pieces of documentary and/or real evidence over which there is objection, in which case they will be marked as documents for identification.

In this respect, the parties are warned that this process cannot be pro forma. If at trial the presiding judge becomes aware of the fact that the parties did not engage in a meaningful marking of exhibits' process in light of the Federal Rules of Evidence, appropriate sanctions will be taken against counsel. See Fed. R. Civ. P. 1 and 28 U.S.C. § 1927.

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1 The Proposed Pretrial Order, under the heading "List of Exhibits
2 and Translation of Same," shall include a list of the exhibits of
3 each party numbered and/or marked in the same fashion as they will be
4 delivered to the Clerk, with an indication as to which are being
5 admitted without objection by opposing counsel.

6 The parties are aware of the fact that the proceedings in this
7 court are held in English. That means that particular attention
8 should be given to the Clerk's Notice to Counsel 90-4, dated
9 April 20, 1990, on the subject of translations and interpreters.
10 Members of the bar are reminded of the provisions of Local Rule 108
11 which, in essence, do not allow for the filing of documents in
12 Spanish unless duly translated by court interpreters.
13

14 VI.

15 DEPOSITIONS

16 The parties will list each deposition intended to be used at
17 trial, with designation of portions to be used by the party first
18 offering the same. Objections to the use of depositions or to any
19 designated portion not made at the time of the preparation of the
20 Proposed Pretrial Order will be deemed waived.
21

22 VII.

23 THE POINTS OF LAW TO BE PASSED UPON BY THE COURT

24 As in other items which could be the object of agreement, the
25 parties are directed to attempt to agree on points of law to be
26

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1 passed upon by the court. In the event that this is not possible,
2 each party shall state what, in its opinion, are the points of law to
3 be passed upon by the court. Adequate citations to statutes and/or
4 case law should be given when appropriate.

5
6 **VIII.**

7 **PROPOSED VOIR DIRE AND JURY INSTRUCTIONS**

8 The Proposed Pretrial Order shall incorporate the parties'
9 agreement as to proposed voir dire and proposed jury instructions,
10 both general and specific, related to the particular case in issue.
11 There is no need to propose routinary instructions, often referred to
12 as boilerplate instructions. In the event that the parties cannot
13 agree on this subject, each party shall make a part of the Proposed
14 Pretrial Order, under item VIII, its proposed voir dire questions to
15 the jury and all suggested standard or general instructions, as well
16 as specific instructions to be given to the jury. The parties are
17 advised that the court prefers references to Devitt & Blackmar,
18 Federal Jury Practice and Instructions, and/or Pattern Jury
19 Instructions, 5th, 7th, 9th, and 11th Circuits, and/or Federal
20 Judicial Center Publications.

21
22 **IX.**

23 **TECHNICAL WORDS**

24 A list, in alphabetical order, of technical words that could be
25 used during the trial, must be made a part of the Proposed Pretrial
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Order. This request is for the benefit of court personnel,
specifically the court reporter and the court interpreter.

X.

WITNESSES

The Proposed Pretrial Order shall contain a list of the
potential witnesses to be called by each party, with a brief
description of the purpose and/or content of their testimony.

XI.

EXPERT WITNESSES

In the event that expert witnesses are to be utilized by the
parties, the Proposed Pretrial Order shall contain written
stipulations or statements setting forth the qualifications of the
expert witnesses to be called by each party. A brief description of
the purpose of the expert testimony will be given as it pertains to
each expert witness. The parties should be aware of the fact that
Fed. R. Evid. 706 allows the court to appoint experts on its own
motion and/or on motion of any party.

XII.

ITEMIZED STATEMENT OF SPECIAL DAMAGES

In the event that issues of special damages are to be passed
upon at trial, an itemized statement of special damages shall be
incorporated into the Proposed Pretrial Order. The party or parties
not in agreement with the proposed statement of special damages shall

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1 include the reasons in opposition under this part of the Proposed
2 Pretrial Order.

3 **XIII.**

4 **ESTIMATED LENGTH OF TRIAL**

5 The parties will make an estimate of the probable length of
6 trial.

7 **RESERVATIONS**

8
9 5. Unless otherwise disposed of by the court, each party is
10 limited to a maximum of three (3) expert witnesses. The court
11 reserves to each party the right to offer rebuttal testimony at trial
12 if necessary. The court also reserves to each party the right to
13 further supplement the list of witnesses upon application to the
14 court and for good cause shown.

15 6. The Proposed Pretrial Order may only be modified to prevent
16 manifest injustice. Such modification may be made either on
17 application of counsel for the parties or on motion of the court.

18
19 7. The parties are reserved the right to supplement their
20 request for jury instructions during trial as it pertains to matters
21 that could not be reasonably anticipated.

22 8. The Proposed Pretrial Order shall contain the full caption
23 of the case, making reference to appropriate name of each party to
24 the controversy as the same stands for trial purposes.
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9. The Proposed Pretrial Order shall be filed **on or before April 3, 2000.**

10. At the time of pretrial, the parties should be prepared to discuss the possibility of bifurcating liability from damages. This applies both to bench and jury trials. The parties are also instructed to prepare and file with their Proposed Pretrial Order their proposed findings of fact and conclusions of law. This applies to bench trials.

11. If any party has any serious objection to the deadlines imposed herein, said party should inform the court **not later than September 17, 1999**. Otherwise, the court will assume that the deadlines are agreeable to all parties. Unless by order of the court, the provisions set hereinabove are binding on the parties and on counsel to the parties.

TRIAL

12. If a trial setting has not been given to the parties prior to the Pretrial Conference, the parties should expect a prompt trial setting after the Pretrial Conference. At the time of the conference, the court will determine whether this case is a candidate to be placed on a ready-to-try case list. This will mean that trial

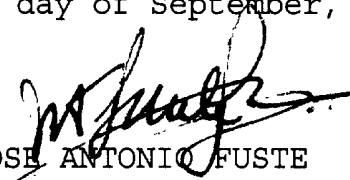
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may be set on short notice any time thereafter, with at least one
week's notice.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 1st day of September, 1999.



JOSE ANTONIO FUSTE
U. S. District Judge